

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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7 EMPLOYERS FIRE INSURANCE COMPANY,  
8 Plaintiff,  
9 vs.  
10 BASIC FOOD FLAVORS, INC.,  
11 Defendants.

2:10-cv-01109-JCM-VCF

**REPORT AND RECOMMENDATION**

13 On March 21, 2012, Plaintiff/Counter-Defendant Employers Fire Insurance Company and  
14 Defendant/Counter-Claimant Basic Food Flavors, Inc. filed the Joint Motion for Order Approving  
15 Settlement (# 74). A Joint Motion for Telephonic Status Conference on the Joint Motion for Order  
16 Approving Settlement (# 76) was filed on April 12, 2012 and the Court granted the motion and  
17 scheduled a telephonic status hearing for April 20, 2012 at 1:00 p.m. At the status hearing on April 20,  
18 2012, the Court heard representations from both sides regarding the Joint Motion for Order Approving  
19 Settlement and afterwards the Court ordered a hearing for May 15, 2012. The parties were ordered to  
20 deliver to chambers, the original signed, completed settlement agreement with all exhibits including  
21 Exhibit H by May 8, 2012. The original settlement agreement shall be filed in open court and Exhibit H  
22 will be filed under sealed. The parties were ordered to provide at least a 14-days notice of the hearing to  
23 all the known HVP claimants. HVP claimants will be allowed to participate telephonically at the May  
24 15, 2012 hearing.

On May 15, 2012 at 2:00 p.m., the Court held a hearing on the Joint Motion for Order Approving Settlement (#74). Counsel and parties present are listed in the minutes of proceedings (#85). Defendant Basic Food Flavor, Inc.'s counsel, Mr. Joseph Garin informed the Court that notices of the hearing were properly distributed to the HVP Claimants pursuant to the Court's Order (#80). During the hearing, the Court admitted into evidence as Court Exhibit 1, the original fully signed settlement agreement without Exhibit H. Exhibit H to the settlement agreement was filed under sealed as Court Exhibit 2. The Court discusses in detail Section III of the settlement agreement pertaining to conditions 1 through 3 and opened the floor to all parties present for any objections or disputes to Section III of the settlement agreement. No objections were made by any of the parties or the HVP Claimants.

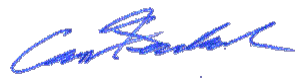
### **RECOMMENDATION**

IT IS HEREBY RECOMMENDED that the Joint Motion for Order Approving Settlement (#74) is Granted and the fully signed settlement agreement with Exhibit H and filed, respectively, as Court Exhibit 1 and filed under seal Court Exhibit 2 shall be approved.

### **NOTICE**

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the court of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waived the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

DATED this 18<sup>th</sup> day of May, 2012.

  
 CAM FERENBACH  
 UNITED STATES MAGISTRATE JUDGE